THANGACHIMMAH & ANOR. v. FLOWER

[O.C.J. (Yong J.) August 1, 1968]
[K.L. — Civil Suit No. 177 of 1968]

Negligence — Motor accident — Defence of "inevitable accident" — Discharge of onus on defendant — Damages.

The plaintiffs (the administrators of the estate of one *S* decd.) sued the defendant for damages as a result of a motor accident in which *S* was killed. The plaintiffs alleged that the defendant drove his car so negligently that it ran into and killed *S* who was cycling on his proper side of the road. The defendant denied that he was negligent and pleaded inevitable accident. The defendant alleged that the windscreen of his car shattered without warning and completely obscured his view as a result of which he could not see *S*.

Held: (1) the defendant had failed to discharge the onus placed upon him to show that the cause of the accident was a cause not produced by him and that the result of which he could not avoid;

(2) the defendant was guilty of negligence in driving his car at an excessive speed in the circumstances and in failing to stop his car in time to avoid running into *S* who was travelling on the proper side of the road;

(3) the plaintiffs were entitled to damages (fixed at $14,000 by consent) and costs.

Cases referred to:—

(1) *The Virgil*, (1843), 2 W. Rob. 201; 166 E.R. 730, 731.

(2) *The Marpesia*, L.R. 4 P.C. 212, 220.

(3) *The Merchant Prince* [1892] P. 179, 190, 189, 187.

(4) *The Europa* (1850), Jur. 627, 628.

(5) *The Saint Angus* [1938] P. 225, 229.

(6) *The Dageid* (1947), 80 Ll.L.R. 517, 520.

(7) *The Carrick Coast* (1948), 81 Ll.L.R. 447, 449.

(8) *The Southport Corporation* v. *Esso Petroleum Co. Ltd.* [1954] 2 Q.B. 182, 200.

CIVIL SUIT.

R. Ponnudurai for the plaintiffs.

Peter Mooney for the defendant.

Cur. Adv. Vult.

Yong J.: This action for damages arose out of a motor accident in which the defendant was alleged to have driven his motor car so negligently that it ran into and killed a cyclist from behind. Particulars of his negligence given in the statement of claim were that the defendant was driving at excessive speed, without keeping any proper look-out, had failed to stop or slow down in time to avoid the accident, and had failed to exercise proper management and control of his car.

In his defence, the defendant admitted that at the time when his car knocked down the deceased, the deceased was cycling on his proper side of the road. The defendant however denied that he was negligent and claimed that it was an inevitable accident. He alleged that while his car was travelling along Jalan Ampang "the windscreen of his car shattered without warning and completely obscured the view of the defendant. Before the defendant could bring the car to a halt, he had collided with the plaintiff whom he could not see".

The accident took place at the 3¼ mile Jalan Ampang, a busy highway, on the night of the 30th of March 1967 at about 10.30 p.m.

Since defence has pleaded inevitable accident it is relevant to ask what is in law the meaning of inevitable accident and what has to be proved to establish it?

In *The Virgil* (1) inevitable accident was defined as "that which the party charged with the offence could not possibly prevent by the exercise of ordinary care, caution and maritime skill." This definition was followed by Sir James Calvile in *The Marpesia* (2) and approved by Fry L.J. in the important case of *The Merchant Prince.*(3) To my mind the sum total of all these decisions including that of *The Europa* (4) is that an accident is termed inevitable if it could not have been obviated by the exercise of ordinary care, caution and skill.

To establish a defence of inevitable accident Fry L.J. in the said *Merchant Prince* case said at page 189:—

> "The burden rests on the defendants to shew inevitable accident. To sustain that, the defendants must do one or other of two things. They must either shew what was the cause of the accident, and shew that the result of that cause was inevitable; or they must shew all the possible causes, one or other of which produced the effect, and must further shew with regard to every one of these possible causes that the result could not have been avoided. Unless they do one or other of these two things, it does not appear to me that they have shewn inevitable accident."

and Lord Esher M.R. put it more succinctly at page 178 as follows:—

> "He can only get rid of that proof against him by shewing inevitable accident, that is by shewing that the cause of the collision was a cause not produced by him, but a cause the result of which he could not avoid."

The principles laid down in *The Merchant Prince* have been repeatedly applied by the courts notably in *The Saint Angus,*(5) *The Dageid,*(6) and *The Carrick Coast.*(7) In *The Southport Corporation* v. *Esso Petroleum Co. Ltd.*(8) Lord Denning at page 200, said:—

> "I do not think we should admit of any doubt upon a rule which is at once so just and so convenient. It applies not only to a ship at sea, but also to a lorry or a horse and cart which gets out of control and runs off the road into a house."

The decision of the Court of Appeal in this case was however reversed by the House of Lords on a different point.

In the present case the defendant John Flower sought to escape from the charge of

negligence by alleging that the windscreen of his car had suddenly shattered and that he could not see anything through it. He however gave no explanation and made no attempt to give any as to the cause of the shattering. He left the court in the dark to guess whether the windscreen which might have already been defective was shattered by excessive vibrations of the car due to the speed in which it was travelling or whether the body of the cyclist had been thrown on to the bonnet of the car and smashed the windscreen or whether it had been hit by other flying objects. But one thing was however clear. After the windscreen was shattered the defendant did not or could not stop the car for a distance of 75 yards before knocking down the cyclist who was cycling on his correct side of the road and going in the same direction as the defendant. His car left a brake mark of 117 feet long on the road! Judging from the evidence it is without doubt that the car must have been travelling at some speed not consistent with safety of other persons lawfully using the road.

The defendant admitted under cross-examination that Jalan Ampang was a very busy highway crowded with cyclists, pedestrians and cars, and that at the time when his car knocked down the cyclist he knew there would be cyclists cycling on the side of the road. He further admitted that if his car was travelling at 30 — 35 miles per hour as he had claimed, he could have pulled up his car within 75 feet instead of 75 yards.

His car was badly damaged. The windscreen was shattered, the front right side lamp was completely smashed, the front right bumper was bent inwards and the middle part of the bonnet of the car was dented, which would indicate that some object must have fallen against the bonnet. We do not know whether the cyclist had or had not been thrown upon the bonnet and smashed the windscreen by the force of the impact of the car on him. According to the evidence of the police sergeant who investigated into the case, pieces of the shattered windscreen were found scattered inside the car as well as on the road around the car covering a large area. The damage to the car, and the places where the pieces of the shattered windscreen were found indicated that the force of the impact was considerable. The rear portion of the deceased's bicycle was badly damaged.

Applying the principles laid down in *The Merchant Prince*,[3] I hold that the defendant John Flower had failed to discharge the onus placed upon him to show that the cause of the accident was a cause not produced by him and the result of which he could not avoid.

On the evidence before me and after hearing the witnesses, I find as a fact that the defendant was guilty of negligence in driving his car at a speed which in the circumstances of this case was excessive and in failing to stop his car in time to avoid running into the cyclist who was travelling on his proper side of the road.

In the light of my findings, I give judgment for the plaintiffs in the sum of $14,000 (the amount of which was agreed by both counsel) and costs. The said sum is to be deposited into court pending application by the plaintiffs to distribute it to the persons entitled thereto.

Judgment for the plaintiffs.

Solicitors: *Rajendra & Teik Ee; Skrine & Co.*

LAW KIAT LONG & ORS. v. PARDONS BOARD, JOHORE & ORS.
OIE HEE KOI & ORS. v. PARDONS BOARD, JOHORE & ORS.

[O.C.J. (Ali J.) August 8, 1968]
[Johore Bahru — Motions Entered Nos. 24 and 25 of 1968 in Civil Suit Nos. 202 and 203 of 1968]

Internal Security — Conviction for capital offences under Internal Security Act, 1960 — Appeal for clemency to Pardons Board — Injunction to Superintendent of Prisons pending execution — Whether court has power to grant declaration and injunction in such cases.

Government Proceedings — Whether court can grant declaration and injunction — Government Proceedings Ordinance, 1956, s. 29(2) — Specific Relief Ordinance, 1950, s. 54(d) — Effect of.

The plaintiffs claimed in these two motions various reliefs in the form of declarations following the rejection of their petitions for clemency or pardons for capital offences under the Internal Security Act 1960 to the Ruler of the State of Johore. They also sought an interim injunction against the seventh defendant the Superintendent of Prisons from carrying into effect any warrant of execution which may have been directed to him.

Held: (1) the court has no jurisdiction to entertain the claim for an interim injunction in view of section 29(2) of the Government Proceedings Ordinance and section 54(d) of the Specific Reliefs (Malay States) Ordinance 1950;

(2) there was no principle or authority supporting the proposition that the court had the inherent jurisdiction to make an interim declaration;

(3) no order should be made on either of the two motions.

Case referred to:—

(1) *Underhill* v. *Ministry of Food* [1950] 1 All E.R. 591.

MOTIONS.

P. G. Lim for the 7 plaintiffs in Civil Suit 202 of 1968.

Sim Teow Gok for the 4 plaintiffs in Civil Suit No. 203 of 1968.